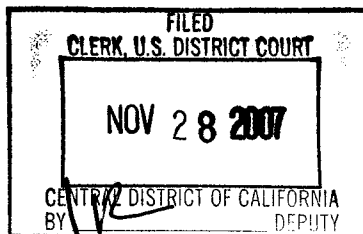


1 THOMAS P. O'BRIEN
 United States Attorney
 2 LEON W. WEIDMAN
 Assistant United States Attorney
 3 Chief, Civil Division
 KEITH M. STAUB
 4 Assistant United States Attorney
 California Bar Number: 137909
 5 Room 7516 Federal Building
 300 North Los Angeles Street
 6 Los Angeles, California 90012
 Telephone: (213) 894-7423
 7 Facsimile: (213) 894-7819
 email: Keith.Staub@usdoj.gov



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NOV 27 PM 1:19
 U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 LOS ANGELES

LONGED

8 Attorney for Defendant United States of America

9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11
 12
 13 FRANK E. MERRITT

14 Plaintiffs,

15 v.

16 UNITED STATES OF AMERICA

17 Defendant.

ED
) No. CV 06-1135 PSG (OPx)
)
) STIPULATION FOR COMPROMISE
) SETTLEMENT AND RELEASE OF
) FEDERAL TORT CLAIMS ACT CLAIMS
) PURSUANT TO 28 U.S.C. § 2677;
) ~~(PROPOSED)~~ ORDER

18) HON. PHILIP S. GUTIERREZ

19 It is hereby stipulated by and between the undersigned
 20 plaintiff (meaning any person, other than the defendant and the
 21 structured settlement broker, signing this agreement, whether or
 22 not a party to this civil action), plaintiff, FRANK E. MERRITT,
 23 and the United States of America, by and through their respective
 24 attorneys, as follows:

25 1. The parties do hereby agree to settle and compromise
 26 each and every claim of any kind, whether know or unknown,
 27 arising directly or indirectly from the acts or omission that
 28 gave rise to the above-captioned action under the terms and

1 conditions set forth in this Settlement Agreement.

2 2. This Stipulation for Compromise Settlement is not, is
3 in no way intended to be, and should not be construed as, an
4 admission of liability or fault on the part of the United States,
5 its agents, servants, or employees, and it is specifically denied
6 that they are liable to Plaintiff. This settlement is entered
7 into by all parties for the purpose of compromising disputed
8 claims under the Federal Tort Claims Act and avoiding the
9 expenses and risks of future litigation.

10 3. The United States of America agrees to pay Plaintiff
11 the cash sum set forth below in paragraph 3 (A) (1) to purchase
12 the annuity contract described below in paragraph 3 (A) (2).

13 A. As soon as it is practicable after the execution
14 of this Stipulation for Compromise Settlement the United States
15 will pay by wire transfer to EPS Settlements Group Settlement
16 Trust Account (at UMB Banks, 1670 Broadway, Denver, Colorado
17 80202, ABA #107001067, Account No. 697116575), the sum of Two
18 Hundred Thousand and 00/100 Dollars (\$200,000.00) (hereinafter
19 "settlement amount"), out of which the following disbursements
20 will be made by EPS Settlements Group from said trust account:

21 1. To plaintiff Frank Merritt, and Jeffrey
22 Milman and Jeanne Anne Steffin, attorneys for plaintiff, the sum
23 of Eighty Two Thousand Three Hundred Thirteen Dollars and Twenty
24 Nine Cents (\$82,313.29);

25 2. To a life insurance company rated at least A+
26 by A. M. Best rating service, the sum of One Hundred Seventeen
27 Thousand Six Hundred Eighty Six Dollars and Seventy One Cents
28 (\$117,686.71) to purchase the annuity contract described in

1 paragraph 3 (B) below.

2 The parties agree that any attorney's fees owed by Plaintiff
3 shall not exceed 25% of the settlement amount (28 U. S. C. §
4 2678) and must be paid out of the cash sum set forth in paragraph
5 3 (A) (1) and not in addition thereto. Plaintiff's attorney
6 agrees to distribute to Plaintiff his portion of the cash sum set
7 forth above in paragraph 3 (A) (1).

8 The parties agree that the settlement amount of Two Hundred
9 Thousand and 00/100 Dollars (\$200,000.00) represents the entire
10 amount of the compromise settlement and that the respective
11 parties will each bear their own costs, fees, and expenses.

12 B. The United States will purchase an annuity
13 contract to make the following payments:

14 **Payee: Frank Merritt** **DOB: 04/14/1942**

15 \$1,725.03 per month for the life of Frank Merritt beginning
16 30 days from funding of the annuity.

17 All sums set forth herein constitute damages on account of
18 personal injuries or sickness, within the meaning of §104(a) (2)
19 of the Internal Revenue Code of 1986, as amended.

20 It is understood and agreed by the parties that the purchase
21 price of the annuity may vary according to the price charged for
22 said annuity contract on the date of purchase. The parties agree
23 that the total cost to the United States of all payments required
24 under this Stipulation for Compromise Settlement shall not exceed
25 Two Hundred Thousand and 00/100 Dollars (\$200,000.00). In the
26 event the annuity purchase price has changed by the time of
27 funding, the annuity payments will be adjusted either upward or
28 downward so that the total purchase price of the annuity contract

1 shall be neither more than nor less than One Hundred Seventeen
2 Thousand Six Hundred Eighty Six Dollars and Seventy One Cents
3 (\$117,686.71).

4 The annuity contract will be owned solely and exclusively by
5 the United States and will be purchased as soon as practicable
6 following the execution of this Stipulation for Compromise
7 Settlement and Release. The parties stipulate and agree that the
8 United States' only obligation to said annuity contract and any
9 annuity payments therefrom is to purchase the annuity contract,
10 and they further agree that the United States does not guarantee
11 or insure any of the annuity payments. The parties further
12 stipulate and agree that the United States is released from any
13 and all obligations with respect to the annuity contract and
14 annuity payments upon the purchase of the annuity contract.

15 The parties stipulate and agree that the annuity company
16 that issued the annuity contract shall at all times have the sole
17 obligation for making all annuity payments. The obligation of
18 the annuity company to make each annuity payment shall be
19 discharged upon the mailing of a valid check in the amount of
20 such payment to the address designated by the party to whom the
21 payment is required to be made under this Stipulation for
22 Compromise Settlement and Release. Checks lost or delayed
23 through no fault of the annuity company shall be promptly
24 replaced by the annuity company, but the annuity company is not
25 liable for interest during the interim.

26 The parties stipulate and agree that the annuity payments
27 cannot be accelerated, deferred, increased, or decreased by the
28 parties, that no part of any annuity payments called for herein

1 or any assets of the United States or the annuity company are
2 subject to execution or any legal process for any obligation in
3 any manner, and that the claimant shall not have the power to
4 sell, mortgage, encumber, or anticipate said annuity payments, or
5 any part thereof, by assignment or otherwise.

6 The Plaintiff, his guardians, heirs, executors,
7 administrators or assigns do hereby agree to maintain with the
8 annuity company a current mailing address, and to notify the
9 annuity company of the death of any beneficiary of said annuity
10 contract within ten (10) days of death.

11 4. Plaintiffs and Plaintiff's heirs, executors,
12 administrators or assigns do hereby accept the cash sums set
13 forth above in paragraph (3) (A) and the purchase of the annuity
14 contract set forth above in paragraph (3) (B), in full release,
15 settlement, and satisfaction of any and all claims, demand,
16 rights, and causes of action of whatsoever kind and nature,
17 arising from, and by reason of, any and all known and unknown,
18 foreseen and unforeseen, bodily and personal injuries, death, or
19 damage to property, and the consequences thereof, which the
20 claimants or claimants' heirs, executors, administrators, or
21 assigns may have or hereafter acquire against the United States,
22 its agents, servants and employees on account of the same subject
23 matter that gave rise to the above captioned action, including
24 any future claims for wrongful death and any claims for fees,
25 costs and expenses; and do hereby agree to reimburse, indemnify
26 and hold harmless the United States and its agent, servants, and
27 employees from any and all such claims, causes of action, liens,
28 rights, or subrogated or contribution interests incident to,

1 resulting or arising from the acts or omissions that gave rise to
2 the above captioned action, including claims or causes of action
3 for wrongful death.

4 5. Plaintiff specifically agrees, as additional
5 consideration for this Stipulation for Compromise Settlement, to
6 waive the provisions of Section 1542 of the Civil Code of the
7 State of California, and Plaintiffs understand that said section
8 provides:

9 A general release does not extend to claims which
10 the creditor does not know or suspect to exist in his
11 favor at the time of executing the release, which, if
12 known by him must have materially affected his
13 settlement with the debtor.

14 Therefore, and notwithstanding anything to the contrary herein,
15 Plaintiff explicitly releases any and all claims against the
16 United States of America, its agents, servants, and employees
17 which Plaintiff does not know or suspect to exist in favor of
18 Plaintiff at the time Plaintiff and his attorneys execute this
19 Stipulation for Compromise Settlement, and which would have
20 materially affected this settlement if such claim or claims had
21 been known.

22 6. This compromise settlement is specifically subject to
23 each of the following conditions:

24 a. An agreement by the parties on the terms,
25 conditions, and requirements of this Stipulation for Compromise
26 Settlement and the annuity contract. The parties stipulate and
27 agree that the Stipulation for Compromise Settlement and the
28 compromise settlement and null and void in the event the parties

1 cannot agree on the terms, conditions and requirements of this
2 Stipulation for Compromise Settlement and the annuity contract.
3 The terms, conditions and requirements of this Stipulation for
4 Compromise Settlement are not severable and the failure to agree,
5 fulfill or comply with any term, condition, or requirement
6 renders the entire Stipulation for Compromise Settlement and the
7 compromise settlement null and void. The authorization by the
8 Attorney General or the Attorney General's designee to negotiate
9 and consummate a settlement for the amount agreed upon by the
10 parties does not make the settlement binding upon the United
11 States unless and until the other terms, condition and
12 requirements of this Stipulation for Compromise Settlement have
13 been completely agreed upon in writing.

14 b. Each beneficiary of the annuity contract set forth
15 in paragraph 3 (A) (2) must be alive at the time of the purchase
16 of said annuity contract. In the event of the death of any
17 beneficiary prior to the purchase of said annuity contract, the
18 entire Stipulation for Compromise Settlement and the compromise
19 settlement are null and void.

20 7. Plaintiff's attorney agrees to distribute the
21 settlement proceeds to the plaintiff. In exchange for payment of
22 the sum stated above, and contemporaneously with the payments set
23 forth above, Plaintiff will dismiss this action, with prejudice
24 and with each party bearing its own fees, costs, and expenses.

25 8. The parties agree that this Stipulation for Compromise
26 Settlement, including all the terms and conditions of this
27 compromise settlement and any additional agreements relating
28 thereto, may be made public in their entirety, and Plaintiff

1 expressly consents to such release and disclosure pursuant to 5
2 U. S. C. § 552a (b).

3 9. It is contemplated that this Stipulation for Compromise
4 Settlement may be executed in several counterparts, with a
5 separate signature page for each party. All such counterparts
6 and signature pages, together, shall be deemed to be one
7 document.

8 10. Plaintiff agrees that Plaintiff is obligated to pay any
9 and all liens from any and all insurance companies and any all
10 persons or organizations who have or claim to have subrogated
11 assigned claims arising out of or related to the subject matter
12 of this suit.

13 11. This written agreement contains all of the agreements
14 between the parties and is intended to be and is the final and
15 sole agreement between the parties. The parties agree that any
16 other prior or contemporaneous representations or understandings
17 not explicitly contained in this written agreement, whether
18 written or oral, are of no further legal or equitable force or

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

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26 ///

27 ///

28 ///

1 effect. Any subsequent modification to this agreement must be in
2 writing, and must be signed and executed by the parties.

3
4 Executed this ____ day of ____, 2007.

5 (see attached)
6 JEFFREY MILMAN
7 Attorney for plaintiff

8 Executed this ____ day of ____, 2007.

9 (see attached)
10 JEANNE ANNE STEFFIN
11 Attorney for plaintiff

12 Executed this 26 day of Nov., 2007.

13 THOMAS P. O'BRIEN
14 United States Attorney
15 LEON W. WEIDMAN
16 Assistant United States Attorney
17 Chief, Civil Division

18 (Signature)
19 KEITH STAUB
20 Assistant United States Attorney
21 Attorneys for United States of America

22 Executed this ____ day of ____, 2007.

23 (see attached)
24 LEN BLONDER
25 Structured Settlement Broker

26 ORDER

27 THIS STIPULATION IS ACCEPTED.

28 DATED: 11/28/07

(Signature)
HON. PHILIP S. GUTIERREZ
United States District Judge

1 effect. Any subsequent modification to this agreement must be in
2 writing, and must be signed and executed by the parties.

3
4 Executed this 9 day of November, 2007.

5
6 JEFFREY MILMAN
7 Attorney for plaintiff

8 Executed this ____ day of _____, 2007.

9
10 JEANNE ANNE STEFFIN
11 Attorney for plaintiff

12 Executed this ____ day of _____, 2007.

13 THOMAS P. O'BRIEN
14 United States Attorney
15 LEON W. WEIDMAN
16 Assistant United States Attorney
17 Chief, Civil Division

18 KEITH STAUB
19 Assistant United States Attorney
20 Attorneys for United States of America

21 Executed this ____ day of _____, 2007.

22 LEN BLONDER
23 Structured Settlement Broker

24
25 ORDER

ATTACHMENT

26 THIS STIPULATION IS ACCEPTED.

27 DATED: _____

28 HON. PHILIP S. GUTIERREZ
United States District Judge

1 effect. Any subsequent modification to this agreement must be in
2 writing, and must be signed and executed by the parties.

3
4 Executed this ____ day of ____, 2007.

5
6 _____
JEFFREY MILMAN
Attorney for plaintiff

7
8 Executed this 19th day of November 2007.

9
10 _____
JEANNE ANNE STEFFIN
Attorney for plaintiff

11
12 Executed this ____ day of ____, 2007.

13 THOMAS P. O'BRIEN
United States Attorney
14 LEON W. WEIDMAN
Assistant United States Attorney
15 Chief, Civil Division

16
17 _____
KEITH STAUB
Assistant United States Attorney
18
Attorneys for United States of America

19
20 Executed this ____ day of ____, 2007.

21
22 _____
LEN BLONDER
Structured Settlement Broker

23
24
25 ORDER

26 THIS STIPULATION IS ACCEPTED.

ATTACHMENT

27 DATED: _____

28 _____
HON. PHILIP S. GUTIERREZ
United States District Judge

effect. Any subsequent modification to this agreement must be in writing, and must be signed and executed by the parties.

Executed this ____ day of ____, 2007.

JEFFREY MILMAN
Attorney for plaintiff

Executed this ____ day of ____, 2007.


JEANNE ANNE STEFFIN
Attorney for plaintiff

Executed this ____ day of ____, 2007.

THOMAS P. O'BRIEN
United States Attorney
LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division

KEITH STAUB
Assistant United States Attorney
Attorneys for United States of America

Executed this 26th day of November, 2007.


LEN BLONDER
Structured Settlement Broker

ORDER

THIS STIPULATION IS ACCEPTED.

ATTACHMENT

DATED: _____

HON. PHILIP S. GUTIERREZ
United States District Judge

PROOF OF SERVICE BY MAILING

I am over the age of 18 and not a party to the within action. I am employed by the Office of United States Attorney, Central District of California. My business address is 300 North Los Angeles Street, Suite 7516, Los Angeles, California 90012.

On November 27, 2007, I served **Stipulation for Compromise Settlement and Release of Federal Tort Claims Act Claims Pursuant to 28 U.S.C. § 2677; [Proposed] Order** on each person or entity named below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary office practices. I am readily familiar with the practice of this office for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Date of mailing: November 27, 2007. Place of mailing: Los Angeles, California.

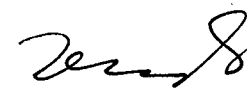
Person(s) and/or Entity(s) to Whom mailed:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on: November 27, 2007 at Los Angeles, California.



ZENAIDA A. ROSACIA

SERVICE LIST

Jeffrey A. Milman
Lopez, Hodes, Restaino, Milman & Skikos
9210 Irvine Center Drive
Irvine, CA 92618
(949) 640-8222 (949) 640-8294 fax

Jeanne Anne Steffin
626 North Garfield Avenue
Suite A
Alhambra, CA 91801-1448
(626) 235-1173 (888) 536-7833 fax